

**MINUTES OF THE
GREENSBORO BOARD OF ADJUSTMENT
REGULAR MEETING
JANUARY 24, 2005**

The regular meeting of the Greensboro Board of Adjustment was held on Monday, January 24, 2005 in the City Council Chamber of the Melvin Municipal Office Building, commencing at 2:03 p.m. The following members were present: Hugh Holston, Jim Kee, Ann Buffington, John Cross, Janet Wright and Rick Pinto. Bill Ruska, Zoning Administrator, and Blair Carr, Esq., from the City Attorney's Office were also present.

WELCOME

Chair Hugh Holston welcomed everyone to the January meeting of the Greensboro Board of Adjustment. He explained the procedures of the Board and the procedure for appealing any ruling made by the Board.

APPROVAL OF MINUTES OF LAST MEETING

Mr. Pinto moved approval of the minutes of the December 20, 2004 meeting as written, seconded by Mr. Cross. The Board voted 5-0 in favor of the motion. (Ayes: Holston, Buffington, Cross, Wright, Pinto. Nays: None.)

Mr. Ruska was sworn in for all testimony to be given at the meeting.

Mr. Kee arrived for the remainder of the meeting.

Chair Holston welcomed Ms. Wright as the newest Board member.

Mr. Ruska stated that there are two requests for continuances: In BOA-05-05, 4007 Donegal Drive, the applicant has ordered a survey to be done of the property to correct what may be a discrepancy in the drawing that was submitted. Mr. Cross moved to continue this item to the February meeting, seconded by Ms. Buffington. The Board voted 6-0 in favor of the motion. (Ayes: Holston, Wright, Cross, Pinto, Kee and Buffington. Nays: None).

Mr. Ruska stated that there is also a request to continue BOA-05-06, 702 Waycross Drive.

Marc Isaacson, 101 W. Friendly Avenue, attorney representing the applicant, stated that they are in the process of obtaining easement releases that are pertinent to the property but some of them have not come in yet. He asked that this item be continued until the February meeting to allow time to obtain these easement releases. Mr. Pinto moved to continue this item to the February meeting, seconded by Ms. Buffington. The Board voted 6-0 in favor of the motion. (Ayes: Holston, Wright, Cross, Pinto, Kee and Buffington. Nays: None).

NEW BUSINESS

VARIANCE

- A) BOA-05-01: 510 COUNTRY CLUB DRIVE F. COOPER BRANTLEY REQUESTS VARIANCES FROM THE MINIMUM STREET FRONTAGE AND THE MINIMUM LOT WIDTH REQUIREMENT; AND ALSO REQUESTS AN EXTENSION OF TIME BEYOND 12 MONTHS. THIS CASE WAS PREVIOUSLY APPROVED AT THE FEBRUARY 25, 2002 BOA MEETING FOR THIRTY SIX MONTHS. VIOLATION #1: A PROPOSED LOT WILL HAVE ZERO (0) FEET OF STREET FRONTAGE WHEN 45 FEET IS REQUIRED. TABLE 30-4-6-1 VIOLATION #2: THE SAME PROPOSED LOT WILL HAVE ZERO (0) FEET OF LOT WIDTH AT THE SETBACK LINE WHEN 75 FEET IS REQUIRED. TABLE 30-4-6-1. THE APPLICANT IS ALSO REQUESTING THAT IF THE VARIANCES ARE GRANTED, THE TIME PERIOD THAT REQUIRES 12 MONTHS FOR COMMENCEMENT, OPERATION, OR INSTALLATION BE EXTENDED INDEFINITELY. SECTION 30-9-6.10(F). PRESENT ZONING-RS-12, BS-28, CROSS STREET - GRANVILLE ROAD. (GRANTED)**

Mr. Ruska stated that F. Cooper Brantley is requesting variances for property located at 510 Country Club Drive. A previous variance was requested and approved at the February 25, 2002 Board of Adjustment meeting. The timeframe for the variance was granted for 36 months. The 36 months ends Feb 25, 2005. The previous request was made by Britt A. Preyer, Executor of Estate for Jane Armfield. The property is located on the north side of Country Club Drive west of Granville Road on zoning map block sheet 28. The property is currently zoned RS-12, as are the adjacent properties.

The applicant is requesting variances from the minimum street frontage, minimum lot width, and if the variances are granted, to obtain an indefinite time extension beyond the standard 12 month period. The applicant is proposing for tract #3 to have zero (0) feet of street frontage when 45 feet is required, to have zero (0) feet of lot width at the setback line when 75 feet is required, and if the variances are granted, for the time period that allows 12 months for commencement, operation, or installation be extended indefinitely. The applicant has submitted a survey dated September 6, 2001, drawn by Borum, Wade and Associates, P.A. that shows three (3) tracts of land. Tract 1 contains .57 ac., Tract 2 contains .82 ac., and Tract 3 contains .62 acres. The entire zone lot, (Tracts 1, 2, and 3 together) contains 2.01 acres. The required street frontage and lot width for this zone lot are present.

Section 30-2-2.9 *Zone lot (buildable lot)*: “One or more lots of record in one undivided ownership with sufficient total area, area exclusive of easements and flood hazards, total dimensions, street access, and frontage to permit construction thereon of a principal building together with its required parking and planting yards. In townhouse developments, the zone lot shall be considered to be the entire development (See Section 30-4-10 (Zone Lot Requirements)).”

On July 25, 1944 an agreement was recorded to allow a 32-foot ingress/egress easement for Tract 2 and Tract 3. The three Tracts have remained in the Armfield Estate ownership since prior to 1992. As shown on the tax maps and a survey drawing, Tracts 2 and 3 do not have street frontage. In reference to Section 30-4-10.2 Street Access (A) *Vehicular Access to Public Street Required*: “Every zone lot shall abut and have direct vehicular access to a publicly maintained street, except as provided below in this Section. No building or structure shall be constructed, erected, or placed on a zone lot that does not abut or have direct access to a publicly maintained street, except as provided below in this Section. “None of the exceptions relate to this request or

this situation.

The Planning Department has reviewed the drawing and determined that the total property can be subdivided in compliance with the Ordinance into two buildable zone lots, one a conventional lot and one a flag lot. The conventional lot would contain the existing house. This would eliminate the nonconforming deficiencies that are associated with Tracts 2 and 3 in regard to required street frontage and lot width.

The Planning Department feels that the best access solution, long-term, to bring about the full utilization of properties in this vicinity, including this property, the Bell Property immediately west and the King property north of Bell, is a subdivision featuring a cul-de-sac street providing street frontage for additional buildable lots out of both the Armfield Estate and above mentioned properties; The three property owners would need to join forces to produce such a subdivision. The Planning Department notes that Board approval of the requested variances would not preclude an eventual subdivision along these lines, although it would reduce the incentive.

Should the requested variances be granted, the Technical Review Committee would not later approve a subdivision of only Tracts 1 and 2 into a flag lot and a conventional lot, because doing so would give the appearance of stacking flag lots, which is not permitted by the Ordinance. Attached is a copy of Appendix A-5.11 which demonstrates the prohibited stacking of flag lots.

According to Section 30-9-6.10(F) “ DURATION: The Board may specify a time duration within which construction, operation, or installation shall commence. Unless otherwise specified, construction, operation, or installation shall be commenced within twelve (12) months of the date of issuance of a variance or it shall become void.” If the variances were granted, construction on tract number three would need to begin within 12 months, unless the applicant is granted a different specific time duration.

Cooper Brantley, 213 St. Andrews Road, was sworn and stated that he feels there may be some confusion about this property and he clarified the configuration of the property. It was a buildable lot at the time it was created and only because of changes to the zoning ordinance and subdivision ordinance over time, did this lot become unbuildable. The applicant has not done anything to create this problem. He requested three years ago that it become a buildable lot and that request was granted. He feels that this is a lot of record and should remain so. He questioned whether a time limit on developing this property is fair to the property owner. He would like to have the option that it remain a buildable lot instead of having to come back to the Board every three years to get a variance on the property.

After some discussion, Mr. Cross moved that the Zoning Administrator’s findings of fact be incorporated into the record and based on these findings of fact, moved that the requested variances be granted and extended beyond the statutory twelve month period for a period of five years from the date the original variance would expire, which is February 25, 2005. Practical difficulties or unnecessary hardships result from carrying out the strict letter of the ordinance, specifically that if the applicant complies with the provisions of the ordinance he can make no reasonable use of the property. The hardship of which the applicant complains results from unique circumstances because this lot was created many years ago and zoning rules and regulations have been put in place since that time, making this an unbuildable lot without a variance. The hardship results from the application of the ordinance to the property because the ordinances make this an unbuildable lot. The hardship is not the result of the applicant’s own actions as

neither the lot nor the ownership has ever changed and it is the zoning regulations that have changed around it. This variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit as the lot was created with the easement and purpose to be a buildable lot. The variance assures the public safety and welfare and does substantial justice, seconded by Mr. Pinto. The Board voted 6-0 in favor of the motion. (Ayes: Holston, Wright, Cross, Pinto, Kee and Buffington. Nays: None).

B) BOA-05-02: 3514 DRAWBRIDGE PARKWAY NFPS, INC. REQUESTS A VARIANCE FROM THE MINIMUM OFF-STREET PARKING REQUIREMENT. VIOLATION: A CHANGE IN USE FROM A BULKY RETAIL USE TO A GENERAL OFFICE USE WILL REQUIRE 34 SPACES WHILE ONLY 24 SPACES CAN BE PROVIDED; THUS, A VARIANCE OF 10 SPACES IS REQUESTED. TABLE 30-5-3-1, PRESENT ZONING-CD- SC, BS-172, CROSS STREET-US 220 NORTH. (GRANTED)

Mr. Ruska stated that NFPS, Inc. is the owner of a parcel located at 3514 Drawbridge Parkway. The lot is located on the northern side of Drawbridge Parkway west of US 220 North on zoning map block sheet 172. The applicant is requesting a variance to provide 24 off-street parking spaces instead of the required 34 off-street spaces, a reduction of 10 spaces. The property contains a vacant building consisting of approximately 10,000 square feet, which was built in 1997. The building was previously occupied by Chic's Appliance & TV Center. The applicant is proposing to change the use to general office, which will cause an increase in required parking spaces.

The former business, Chic's Appliance & TV Center, was classified as retail sales- bulk merchandise. The parking requirement was 1 space per 500 square feet of gross floor area. The parking was in compliance with an additional four overflow parking spaces. The applicant is proposing a specific type of office use for the building. The property is currently zoned CD-SC. This zoning classification permits retail, many service uses, and office uses. These types of uses require one space per 250 square feet or one space per 300 square feet. Only the bulk retail requires a lesser parking requirement. Any general retail, service, or office use(s) that would propose occupancy at this location would need a parking variance.

When the property was developed in 1997, it contained a condition that required a 50-foot landscape buffer adjacent to the Drawbridge Parkway frontage. The regular setback requirement for a structure in the shopping center zoning district is 30 feet from the property line. Typically, parking spaces are permitted to be placed within the setback areas; however, the 50 foot buffer restriction limited the development perimeter. The adjacent properties located to the north, east, and west are also zoned CD-SC and the property located on the southern side of Drawbridge Parkway is zoned RS-15.

Marc Isaacson, 101 W. Friendly Avenue, was previously sworn and presented some materials for the Board members' review and explained it in detail. He stated that there are certain conditions about parking and the buffer area in which parking is not permitted. Although it was zoned for shopping center when it was site planned, it was classified as what is generally known as bulky retail and that has a lower parking requirement. There is no direct access to Battleground Avenue.

There was no one to speak in opposition to this request.

Mr. Kee moved that in the matter of BOA-05-02, based on the stated findings of fact, that the Zoning Enforcement Officer be overruled and a variance granted based on the following: There are practical difficulties or unnecessary hardships that result from carrying out the strict letter of the ordinance; if the applicant complies with the provisions of the ordinance he can make no reasonable use of this property which is currently vacant. The hardship of which the applicant complains results from unique circumstances related to the applicant's property because of the zoning change which required additional parking spaces. The hardship results from the application of this ordinance to the property because of the zoning changes. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because this property is commercial in nature and will continue to be so. The granting of the variance assures the public safety and welfare and does substantial justice, seconded by Ms. Buffington. The Board voted 6-0 in favor of the motion. (Ayes: Holston, Wright, Cross, Pinto, Kee and Buffington. Nays: None).

C) BOA-05-03: 700-710 JOLSON STREET WAYNE AND JOYCE STUTTS REQUEST VARIANCES FROM THE MINIMUM CENTERLINE STREET SETBACK REQUIREMENT. VIOLATION: FIVE PROPOSED SINGLE FAMILY DWELLINGS, WHICH ARE PROPOSED ON FIVE CONTIGUOUS ZONE LOTS, WILL ENCROACH 12.5 FEET INTO A 45-FOOT CENTERLINE SETBACK FROM JOLSON STREET. TABLE 30-4-6-5, PRESENT ZONING - RM-18, BS-13, CROSS STREET - KENTWOOD STREET. (GRANTED)

Mr. Ruska stated that Wayne and Joyce Stutts are the owners of five contiguous lots located at 700-710 Jolson Street. The lots are located on the eastern side of Jolson Street south of East Wendover Avenue on zoning map block sheet 13 and are zoned RM-18. The applicant is proposing to construct a single-family home on each lot. Each dwelling will encroach into the minimum front and centerline setback requirements. Each dwelling is required to be 20 feet from the front property line or 45 feet from the centerline of Jolson street (whichever is greater). The applicant is proposing to locate each dwelling 15 feet from the front property line, which results in a 5-foot encroachment from the front property line. The homes will encroach 12.5 feet into a 45-foot centerline setback; thus, the centerline setback requirement is the greater variance request. The lots are rectangular in shape and contain approximately 8,550 square feet. Each lot is 50 feet wide and approximately 171 feet deep. The first 55 feet of depth is the only area of the lots which can contain a building. The remaining portions of the lots contains drainage way and stream buffers. Stream buffer restrictions do not allow buildings to be constructed from the top of bank 50 feet back to the edge of the buffer area. There are several existing houses located to the south of these lots that are constructed 12 to 15 feet from the front property line. Tax records indicate these houses were built in 1951.

Tax records show these lots are recorded in Plat Book 5 on page 393. This subdivision was recorded before adoption of any City Zoning Ordinance. The property contains legal lots of record, but since only the first 55 feet of depth is buildable, the property is severely impacted in terms of building envelopes, unless a variance is granted in reference to current dimensional requirements. Also, this portion of Jolson Street has a substandard dedicated right-of-way. The dedication is only 35 feet, while 50 feet is standard for local and collector streets. The centerline setback is the greater setback for these structures because of the substandard right-of-way. The adjacent properties are also zoned RM-18.

Chair Holston asked if there was anyone present who wished to speak on this matter.

Wayne Stutts, 303 E. Bessemer Avenue, was sworn and stated that he bought these lots on an unpaved portion of Jolson Street. He went before City Council back in November and they adopted the resolution to pave the street and he was told that it would take at least 2 years for the streets to be paved. He would like to have more than 12 months to develop the property because of that fact.

Mr. Cross moved that in regard to BOA-05-03, for the properties at 700 through 710 Jolson Street, that the Zoning Administrator's findings of fact be incorporated into the record by reference and based of the findings of fact, the variance be granted as there are practical difficulties or unnecessary hardships that result from carrying out the strict letter of the ordinance. If the applicant complies with the provisions of the ordinance he can make no reasonable use of the property because of the extreme buffer restrictions that are reflected in the record. The hardship of which the applicant complains results from unique circumstances related to the applicant's property for the same reasons with those buffers. The hardship results from the application of this ordinance to the property for the reasons previously stated and the hardship is not the result of the applicant's own actions. The variance is in harmony with general purpose and intent of the ordinance and preserves its spirit as reflected by the fact that the neighboring lots have the same setbacks as requested here. The granting of the variance assures the public safety and welfare and does substantial justice. And also that this variance be extended beyond the typical twelve month period to last two years beyond the date that the adjacent street is completed and traffic is permitted on it, seconded by Mr. Pinto. The Board voted 6-0 in favor of the motion. (Ayes: Holston, Wright, Cross, Pinto, Kee and Buffington. Nays: None).

D) BOA-05-04: 1821 & 1901 LENDEW STREET FRIENDLY INVESTMENT PROPERTIES, INC. REQUESTS A VARIANCE FROM THE MINIMUM OFF-STREET PARKING REQUIREMENT. VIOLATION: PROPOSED RECONSTRUCTION OF AN EXISTING OFFICE BUILDING TO INCLUDE - MEDICAL AND DENTAL OFFICES WILL REQUIRE 55 SPACES WHILE ONLY 45 SPACES CAN BE PROVIDED; THUS, A VARIANCE OF 10 SPACES IS REQUESTED. TABLE 30-5-3-1, PRESENT ZONING-GO-H, BS-25, CROSS STREET- ENTERPRISE ROAD. (GRANTED)

Mr. Ruska stated that Friendly Investment Properties, Inc. is the owner of the parcels located at 1821 & 1901 Lendew Street. The lot is located on the western side of Lendew Street north of Green Valley Road on zoning map block sheet 25. The applicant is requesting a variance to provide 45 off-street parking spaces instead of the required 55 off-street spaces, a reduction of 10 spaces. The applicant is proposing to demolish the existing building and rebuild a new building. The new building will contain approximately 13,000 square feet, the same amount of square footage as the existing building.

The property contains an office building consisting of approximately 13,000 square feet, which was built in 1966. The building was previously used for general office uses. The applicant is proposing to change the use to a mix of general offices, dental offices, and medical offices, which will cause an increase in required parking spaces.

The mix has been proposed as:

General Offices	- 3,000 square feet
Medical Offices	- 5,000 square feet

Dental Offices - 5,000 square feet

The parking requirements are: General Office: One space per 300 square feet of gross floor area for ten thousand square feet or less;

Medical Office: One space per 200 square feet of gross floor area;

Dental Office: One space per 250 square feet of gross floor area.

The adjacent properties located to the south and west are zoned PI, the adjacent properties located to the north are zoned GO-H, and the properties located on the eastern side of Lendew Street are zoned GO-H and LI.

Marc Isaacson, 101 W. Friendly Avenue, was previously sworn and stated that Friendly Investment Properties is the owner of this property. This property is now just a general office building and the owner has determined that there is a need for medical and dental office space in this vicinity. He presented a handout for the Board member's review and he explained it in detail along with a site plan.

In response to comments by Mr. Cross, Mr. Isaacson stated that he feels that the intent of the statute is to determine what is reasonable, under the circumstances, and his clients feel that they cannot make reasonable use of the property without the variance. He feels that by including the word "reasonable" the legislature asks the community and the Board to determine what is a reasonable use of this particular property. He also mentioned that there are four sub-part questions of the test; the first test which is, is there a practical difficulty or unnecessary hardship. Those are questions the Board should discuss to get to the answer to that question.

There was no one present to speak in opposition to the request.

Ms. Buffington moved that in regard to BOA-05-04, and based on the stated findings of fact, that the Zoning Enforcement Officer be overruled and the variance granted with the condition that the variance is based upon 5,000 square feet of medical, 5,000 square feet of dental use and no more than that. If the applicant complies with the ordinance, there are practical difficulties and unnecessary hardships in this and if the applicant complies with the provisions of the ordinance they will not be able to make a reasonable use of the property for that area. The hardship of which the applicant complains results from unique circumstances related to the property as this is a very old building in an area that is being redeveloped. The hardship does not result from the applicant's own actions. The variance is in harmony with the general purpose and intent of the ordinance as it makes use of a building that is already prominent. The granting of the variance assures public safety and welfare and does substantial justice, seconded by Mr. Pinto.

Mr. Cross made a friendly amendment and asked that the Enforcement Officer's findings of fact be incorporated. Ms. Buffington agreed to the friendly amendment. The Board voted 5-1 in favor of the motion. (Ayes: Holston, Wright, Pinto, Kee and Buffington. Nays: Cross).

E) BOA-05-05: 4007 DONEGAL DRIVE MICHAEL AND SANDRA HORLICK

REQUEST VARIANCES FROM TWO MINIMUM SIDE SETBACK REQUIREMENTS. VIOLATION #1: AN EXISTING CARPORT, WHICH HAS BEEN ATTACHED ONTO THE EASTERN SIDE OF THE HOUSE, ENCROACHES 2.1 FEET INTO A 5-FOOT SIDE SETBACK. TABLE 30-4-6 VIOLATION #2: AN EXISTING STORAGE SHED, WHICH HAS BEEN CONSTRUCTED ONTO THE WESTERN SIDE OF THE HOUSE, ENCROACHES 4 FEET INTO A 5-FOOT SIDE SETBACK TABLE 30-4-6-1. PRESENT ZONING-RS-9, BS-153, CROSS STREET-REHOBETH CHURCH ROAD. (CONTINUED)

F) BOA-05-06: 702 WAYCROSS DRIVE NORMAN AND LAURIE REGAL REQUEST A VARIANCE FROM THE MINIMUM SIDE SETBACK REQUIREMENT. VIOLATION: A PROPOSED ATTACHED GARAGE/ADDITION WILL ENCROACH 6 FEET INTO A 10-FOOT SIDE SETBACK. TABLE 30-4-6-1, PRESENT ZONING-RS-15, BS-78, CROSS STREET- MONMOUTH DRIVE. (CONTINUED)

Counsel Carr stated that she had been involved with a couple of appeals of the Board's decisions in recent months. She will be at the Court of Appeals in Raleigh on March 2nd. She pointed out that it is imperative, based on Court rulings that there are findings of fact that substantiate each part of the test. Just reciting the test itself has been found by the Courts to be insufficient to uphold the Board's orders. There followed some discussion among the Board members and Counsel Carr.

Mr. Ruska stated that the Mayor has received a letter from Joyce Lewis who has resigned from the Board of Adjustment.

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There being no further business before the Board, the meeting was adjourned at 3:40 p.m.

Respectfully submitted,

Hugh Holston, Chair
Greensboro Board of Adjustment

HH/ts.jd